

Independent Review Panel

Committee Recommendation to the Panel

November 25, 2003

IRP Complaint Nos.: A2003.260-Force, et. al: Other complaint Nos. A2003.127-Diaz, A2003.236-Boone, A2003.238-Albiñana, A2003.251-Schmalbach, A2003.324-Barron, and A2003.325-Hans

Complainants: Melissa & Alan Force, Caridad Diaz, Alexandra Boone, Antonieta Albiñana, Antonio Enrique & Eilat Schmalbach, Dorothy Barron, and Kim & Michael Hans

Accused Party: Miami-Dade Department of Solid Waste Management (DSWM)

Dates Complaints Received: 4/17/03 – 10/15/03

Materials Reviewed: Grievance Report Forms, Complainants' letters and bills, Correspondence, Staff Notes, Committee Notes and Departmental Response.

Committee: Jorge Reynardus, Esq., Panel member; Dr. Eduardo I. Diaz, Executive Director; Carol Boersma, Executive Assistant to the Director; and Debbie Penha Cumbermack, Conflict Resolution Specialist.

Meeting Date & Place: November 6, 2003, South Dade Library, 10750 SW 211 Street

Present: Tom Robertson, Esq., Assistant County Attorney; Charles Parkinson, DSWM Acting Assistant Director, Administration & Solid Waste Management – County representatives; Alan & Melissa Force, Antonieta Albiñana, Antonio Enrique & Eilat Schmalbach, Dorothy Barron, Michael & Kim Hans – complainants; Gary Dufek, Collen Griffin and Mike Hatcher – interested parties.

Complaint: The above-mentioned complainants are former customers of Faircloth Sanitation, Inc. - a private waste hauler. They allege that the Department of Solid Waste Management (DSWM) did not notify them in a timely or effective manner, when DSWM took over the service previously provided by Faircloth. Consequently, the complainants paid the bills sent by Faircloth, not knowing the service was being provided by DSWM, and they are now being billed by DSWM for the same garbage service they paid Faircloth for.

History: Tom Robertson, Assistant County Attorney, explained that Faircloth was one of many independent haulers the County had at one time, operating under permits from the Department of Solid Waste Management. After 1992, Faircloth stopped filing monthly reports and paying the required disposal tipping and facility fees to Miami-Dade County. Faircloth was collecting from its customers a 15% add-on to cover the County's fees, but not paying the County. In 1998, the County revoked Faircloth's permit. The County attempted to work with Faircloth for four years; until April 11, 2002, when the 11th Judicial Circuit of Florida issued an Order granting Preliminary Injunctive Relief against Faircloth to cease and desist from engaging in the removal, collection or transportation of solid waste in the County. Although the injunction was in effect, it was not enforced until August 15, 2002. Between April and August, County staff continued to work with Faircloth to resolve the issues.

As part of a Settlement Agreement approved in August 2002, the County agreed to accept \$90,000 in installment payments. The County requested that Faircloth resume payments and provide a list of customer accounts. In an attempt to get a permit in August 2002, Faircloth provided a list of six (6) accounts and paid the disposal facility fees due for January, February and March 2002. When the County was notified that the checks previously received from Faircloth bounced, it denied Faircloth's request for a permit. Faircloth ceased operations on 8/15/02.

DSWM started to pick up waste wherever it was set out in the general area known to have been serviced by Faircloth. Faircloth was known to service as many as 2,200 accounts; however, DSWM could not identify Faircloth's customers because a complete list of accounts had not been provided by Faircloth as was required by the private waste haulers' permit application. On 10/1/02, it was deemed by DSWM that Faircloth did not intend to or could not comply with the Agreement. Between 1998 and 2002, Faircloth made approximately five monthly payments out of the 48 that were due. Therefore, DSWM began to assimilate those former customers who contacted DSWM directly (as well as via Commissioner Katy Sorenson's Office and the Consumer Protection Division), or who were identified by route personnel.

Since Faircloth did not adhere to the terms of the Settlement Agreement, an official denial of permit letter was issued on 4/17/03. Faircloth appealed the denial and lost the appeal in October 2003.

Departmental Response: DSWM Director Andrew Wilfork addressed the complaint in a 9/26/03 memorandum.

The following is excerpted from the memo regarding notification:

In January 2003, DSWM distributed flyers to all residents, who could be identified as former Faircloth customers, informing them that the County was now providing service on a regular basis and noting their set-out days. On July 15, 2003, Charles Parkinson discussed the Faircloth matter in an open forum sponsored by the Redlands Civic Association (RCA). At that meeting (which was reported in the 9/03 Redland Country News), Mr. Parkinson acknowledged the fact that no "official notification" had been sent by the County to former Faircloth customers, because: 1) DSWM had no identification, at the time, of who the customers were since Faircloth never provided a customer list as required under the permit application, and 2) DSWM was working through the permit issue with the County's and Faircloth's counsel. He informed residents that DSWM would be sending out a letter of explanation at the end of the fiscal year and that ultimately they must pay the bill for County services provided in FY 2002-2003. DSWM was withholding any "formal public pronouncements" pending resolution of Faircloth's appeal.

Committee Remarks: After receiving the DSWM memo, a copy was sent to the above-mentioned complainants, most of who partook in the committee meeting.

Independent Review Panel (IRP) member Jorge Reynardus focused on the following issues:

- a) Whether or not DSWM acted reasonably to notify Faircloth customers.
- b) What action, if any, should DSWM take to address the consequent double payments made by Faircloth customers who paid Faircloth, as well as DSWM for services, instead of solely DSWM.

Complainants:

Albiñana: Antonieta Albiñana commented that although the complainants all have Homestead addresses, they reside in a division called Highland Estate which is not identified as Homestead, Naranja, Leisure City, or the Redlands. She said that she never received a flyer or saw any articles in the newspaper, as indicated by DSWM. She commented that the Department did not do a good job disseminating information regarding its court issues with Faircloth or DSWM's provision of solid waste services, prior to billing. She added that someone should have followed up to verify if former Faircloth customers were, in fact, informed. Ms. Albiñana said that a fair way to handle the "double payment" would be for the Department to give some monetary relief, perhaps by subtracting the amount paid to Faircloth from the amount owed to DSWM.

Schmalbach: Antonio Enrique & Eilat Schmalbach replied that DSWM should waive the penalty and late fees. They objected to the fact that the Department's fees for services previously rendered by Faircloth, are double what they paid to Faircloth.

Force: Melissa and Allan Force replied that DSWM said that they were unable to secure a list of Faircloth's customers which made it difficult to provide notification. However, DSWM had no problem locating and notifying customers when money was owed to DSWM. She stated that had proper and timely notification been given, it would have reduced the likelihood of former Faircloth customers paying twice. Mrs. Melissa Force stated that she telephoned the Department to ask if they could switch to the County and was told that they could not. The Forces suggested that DSWM should either take off the amount they paid to Faircloth or render next year's service at a discount.

Hans: Kim and Michael Hans replied that the only notice they received was in the form of a bill from DSWM. Mrs. Kim Hans said that in March 2003, she sent Faircloth a check in the amount of \$229.00. In August 2003, she received a bill from DSWM for \$229.00. The bill did not indicate a due date; however, it did indicate "Prior Years, Prior Penalty, Delinquent Months." When she telephoned DSWM in an attempt to get clarification regarding the amount of the bill and the billing period, she spoke with several representatives ("Helga," "Michelle," "Darlene," "Regina Suarez" and "Ms. Ray") who basically told her that the bill is now due. Mrs. Hans expressed that it is unfair that DSWM did not allow a reasonable time for a homeowner to pay a bill of that magnitude. She added that she recently received another bill for over \$500.00, which includes charges for FY 2003-2004 waste, trash and recycling.

Barron: Mrs. Dorothy Barron said that she is an elderly, widowed woman, who lives alone. She added that she was never told that she had to place the garbage on the curb. Consequently, her garbage was not picked up. She stated that she paid Faircloth on a yearly basis and is "out that money." Recently, she paid the full amount of the DSWM service bill, with the exception of the penalty fee, which she would like waived.

Hatcher: Mike Hatcher is not one of the seven complainants named in this complaint. However, he is a former Faircloth customer. He expressed that although the system was not perfect; DSWM did make attempts to get the word out in the community, and has been responsive. He added that the purpose of government is to serve citizens, and he hopes that there could be "a middle ground."

Department Representative:

Charles Parkinson agreed that the Department did not communicate effectively with former Faircloth customers. He became involved in the issue just prior to the injunction, when he was put into his current position. He insisted that formalized notification be sent out; and in January 2003, DSWM Service Development decided the best way to notify was to go door-to-door and place flyers in mailboxes and on fence posts. Mr. Parkinson stated that the area includes about 25,000 households. He explained that Faircloth had approximately 450 accounts in that area in August 2002 but DSWM did not know the specific properties. DSWM converted between 300-400 accounts during 2002, unless the former Faircloth customer had a valid contract with Faircloth. Mr. Robertson confirmed that he instructed DSWM personnel not to let anyone transfer to DSWM if they had a valid contract with Faircloth.

Mr. Parkinson stated that the annual curbside fee for FY 2002-2003 was \$349.00, which has increased to \$399.00 for FY 2003-2004 – the Department's first increase in eight years. The FY 2003-2004 service fees are included with homeowner's property tax. In a joint effort between DSWM and Commissioner Sorenson's Office, the Department hired an independent firm to disburse a mail survey in the next 30-45 days, in order to research the needs of the customers in the Southwest Dade area. This was a result of many citizens' desire to have a choice of service rather than the County's full service. Mr. Parkinson said that he has the authority to waive late and penalty fees, but not the basic service charge that is set by the Board of County Commissioners. He added that he would work with the complainants on a case-by-case basis to attempt resolution of their complaints.

It should be noted that Mr. Parkinson exhibiting excellent community relations skills. He was well prepared, diplomatic and appropriately responsive to community concerns.

Findings of Fact:

- Although DSWM began servicing Faircloth customers in August 2002, it provided no notification to customers until it distributed Flyers in January 2003.
- Many Faircloth customers did not receive the flyers and continued paying Faircloth.
- Faircloth did not provide DSWM with a complete list of its customers. To date, DSWM does not know if it has identified all customers serviced by Faircloth.
- DSWM sent a letter of explanation on 10/6/03 to residents DSWM was able to identify as Faircloth customers. The letter included information regarding the injunction, settlement agreement, and the services provided by DSWM from mid-August to September 30, 2002, as well as DSWM regular service beginning October 1, 2003.
- The complainants did receive the letter dated 10/6/03.
- Consumer Services Department, Consumer Protection Division has filed suit against Faircloth on behalf of Faircloth customers.

Committee Findings: The committee found that:

- 1) The allegation - that the Department of Solid Waste Management (DSWM) did not notify former Faircloth customers in a timely or effective manner, when DSWM took over the service previously provided by Faircloth. Consequently, they paid both Faircloth and the County for the same garbage service - is **SUSTAINED**. The testimony provided by the complainants, as well as the County support the allegation.
- 2) During its attempts to work with Faircloth, the County was extraordinarily considerate and provided Faircloth leeway. Similar concessions were not provided to those former Faircloth customers who paid both Faircloth and DSWM.
- 3) Although the County committed no wrongdoing by billing for services rendered, the County should take some ownership of the financial hardship and difficulties experienced by former Faircloth customers, who merit consideration and some form of relief by the County.
- 4) The County did not take action on Faircloth's failure to file annual reports and pay County fees for several years, causing the County to lose revenue.
- 5) DSWM did not establish a contingency plan in the event Faircloth stopped providing service to its customers, while it negotiated with Faircloth from 1998 – 2002.
- 6) If DSWM had been pro-active in its efforts to obtain and enforce the permit application provision that required a customer list; former Faircloth customers may have been notified in a timely fashion, possibly preventing most from paying double for waste collection services.

Committee Recommendations: The committee recommends:

1. That, the Department of Solid Waste Management initiate a campaign to assure that all its employees are aware of Miami-Dade County's Guiding Principles that include: "Customer-focused and Customer-driven," "Fair to All," "Accountable and Responsive to the Public," and being "Efficient and Effective."
2. That, the Board of County Commissioners pass legislation allowing DSWM to credit former Faircloth customers for payments they made to Faircloth, while DSWM was providing service. The basis for such request is that DSWM failed to enforce the permit provision that requires independent haulers to provide a list of its customers, and therefore could not adequately prepare a contingency plan to timely and effectively notify customers that payments should be made to the County and not Faircloth.
3. That, the Department of Solid Waste Management waive late and penalty fees billed to former Faircloth customers.
4. That, the Department of Solid Waste Management enforce the permit provision that requires independent haulers to provide a list of its customers, and create a mechanism to reduce or prevent the likelihood of a similar situation occurring to the Department and/or any community serviced by independent haulers.

Disposition of the Independent Review Panel

Complainants: Force, et. al.

Date: November 25, 2003



The Independent Review Panel (IRP) met on November 25, 2003 for the purpose of publicly reviewing seven (7) complaints made against the Miami-Dade Department of Solid Waste Management (DSWM) and the department's response to those complaints. Complainants:

Melissa & Alan Force.....	A2003.260	Caridad Diaz.....	A2003.127
Alexandra Boone.....	A2003.236	Antonieta Albiñana.....	A2003.238
Dorothy Barron	A2003.324	Kim & Michael Hans.....	A2003.325
Antonio Enrique & Eilat Schmalbach.....	A2003.251		

A. Allegations

The complainants, former customers of Faircloth Sanitation, Inc. - a private waste hauler, allege that the Department of Solid Waste Management did not notify them in a timely or effective manner, when DSWM took over the service previously provided by Faircloth. Consequently, the complainants paid the bills sent by Faircloth, not knowing the service was being provided by DSWM, and they are now being billed by DSWM for the same garbage service they paid Faircloth for.

B. Finding Regarding the Allegation

The allegation is SUSTAINED. The testimony provided by the complainants, as well as the County support the allegation.

C. Other Findings

- 1) During its attempts to work with Faircloth, the County was extraordinarily considerate and provided Faircloth leeway. Similar concessions were not provided to those former Faircloth customers who paid both Faircloth and DSWM.
- 2) Although the County committed no wrongdoing by billing for services rendered, the County should take some ownership of the financial hardship and difficulties experienced by former Faircloth customers, who merit consideration and some form of relief by the County.
- 3) The County did not take action on Faircloth's failure to file annual reports and pay County fees for several years, causing the County to lose revenue.
- 4) DSWM did not establish a contingency plan in the event Faircloth stopped providing service to its customers, while it negotiated with Faircloth from 1998 – 2002.

D. Panel Recommendations

1. That the Department of Solid Waste Management initiate a campaign to assure that all its employees are aware of Miami-Dade County's Guiding Principles that include: "Customer-focused and Customer-driven," "Fair to All," "Accountable and Responsive to the Public," and being "Efficient and Effective."
2. That the Board of County Commissioners pass legislation allowing DSWM to credit former Faircloth customers for payments they made to Faircloth, upon reasonable proof of such payment, for service between August 15, 2002 and October 10, 2003. The basis for such request is that DSWM did not adequately prepare a contingency plan to timely and effectively notify customers that payments should be made to the County and not to Faircloth.
3. That the Department of Solid Waste Management waive late and penalty fees billed to former Faircloth customers.
4. That the Department of Solid Waste Management create a mechanism to reduce or prevent the likelihood of a similar situation occurring to the Department and/or any community serviced by independent commercial haulers.

The complaint was concluded on November 25, 2003.